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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of KAITLYN and REGINALD DENNIS MOORE.	
KAITLYN MELLO, Appellant, v. REGINALD DENNIS MOORE, Respondent.	F075446 (Super. Ct. No. VFL253721) **OPINION**

APPEAL from a judgment of the Superior Court of Tulare County. John P. Bianco, Judge.

Law Office of Dale Bruder and Dale Bruder; McCormick, Barstow, Sheppard, Wayte & Carruth, and Todd W. Baxter for Appellant.

No appearance for Respondent.

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INTRODUCTION

Appellant Kaitlyn Mello appeals the trial court's denial of her request to appoint an elisor to execute documents in order to effectuate the terms of a final judgment of dissolution. For the reasons we shall explain, we reverse and remand with instructions for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Kaitlyn Mello (Mello) and Reginald Dennis Moore (Moore) were married on July 19, 2008. By the summer of 2012, the couple had contemplated divorce and, on August 8, 2012, entered into a written agreement for the division of the marital assets. The agreement signed by Moore provided that in the event of divorce, their marital residence in Visalia, California was to be given to Mello as her sole and separate property.[1]

Moore, a professional basketball player, left the United States to play for a basketball team in Luanda, Angola on January 2, 2013. Mello's last contact with Moore was in late December 2012, just prior to Moore leaving for Africa. At that time, Mello e-mailed Moore. She stated, "Not too sure where you are, or where your head is at, but apparently you aren't talking to me any more. [¶] Let's just handle the paperwork and be done, ok Reggie? I do still want to see you, as it has been a year and a half, but this is past ridiculous now. [¶] Please." Moore responded, "Anyway I agree but I would rather never see you again if its [*sic*] ok with you."

Nine months later, on October 4, 2013, Mello filed for dissolution of the marital relationship and a determination of the community property rights between the parties. On the petition for dissolution form, with regard to community assets, Mello checked the

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1 The agreement signed by both Mello and Moore stated in full: "I Reggie Moore in the event of a divorce with Kaitlyn [Mello], give to her the house [in Visalia, California]. Also the car 2011 Ford Edge … will be transferred to Kaitlyn [Mello]. This is my legal document for the court. Also the credit card [debt] of [$]10,000 will be paid by me Reggie Moore. The remainder of payments for the land, 20 acres in Borrough Valley will be paid by me as well."

box requesting that the property rights of the parties be determined. Mello also checked the box for listing the assets and debts and stated, "[t]he nature and extent of the community property assets and obligations to be discovered at a later date." She requested a division of the couple's community assets.

Mello was unable to serve Moore. Eight months after filing the dissolution action, Mello filed an application to serve by publication on July 17, 2014. Mello included a declaration of due diligence explaining why she was not able to effectuate service. She explained that Moore had left to play basketball in Luanda, Angola. Mello made inquiries of Moore's family and friends for information of his whereabouts. She searched city and phone directories in California and Angola but was unable to contact Moore or find his current address. She also searched the internet for any information on Moore. While online, Mello found what she believed to be a photograph of Moore, which she included with her declaration, getting married to another woman in Angola. In addition, Mello made arrangements with an Angolan attorney and process server to attempt service on Moore at one of his basketball games. She provided the paperwork and wire transferred $1,250 to cover the cost of service. The funds were returned to Mello and her multiple attempts to contact the attorney/process server after that were unsuccessful. Although the paperwork remained in Angola, Mello testified that she feared the attorney "no longer can assist [her] due to [Moore's] unknown whereabouts, and his new marriage in Angola."

On August 1, 2014, after reviewing the submitted application, the trial court granted Mello's request to serve notice by publication and ordered that the summons be published in the Visalia Times-Delta, a newspaper of general circulation in the city and county where the parties were residing during the marriage, and where the marital residence was located.

On October 16, 2014, Mello filed a certification of publication showing that the summons was published once a week for four weeks in the newspaper. Moore did not

file a response to the petition for dissolution or otherwise appear in the dissolution proceeding. Mello filed a request for entry of default on November 12, 2014, which the court entered on the same day.

Mello moved for and obtained a default judgment. In her declaration in support of the request to enter default judgment, Mello explained that prior to Moore leaving for Angola, the couple had agreed upon divorce and prepared an agreement regarding the distribution of their primary assets and debts, and she attached the agreement to the application.

The court granted judgment in the form of a marital dissolution on December 5, 2014. Attached to the judgment was an exhibit listing the division of property. The court ordered that "[e]ach spouse will receive the assets listed above as his or her sole and separate property. *The parties must execute any and all documents required to carry out this division*." (Italics added.) Also, "[t]he court reserves jurisdiction to divide any community assets not listed here and *enforce the terms of this order*." (Italics added.) As part of that judgment, the trial court ordered and confirmed to Mello as her sole and separate property the marital residence in Visalia.

More than two years later, on December 19, 2016, Mello filed an ex parte request to enforce the judgment. Given Moore's absence, Mello sought to have the trial court execute a deed transferring the marital residence from joint tenancy to Mello as her separate property in conformance with the terms of the judgment. Specifically, Mello requested the court to use its inherent authority under Code of Civil Procedure section 128, subdivision (a)(4), to appoint an elisor to execute documents to transfer title of the marital residence in order to effectuate the terms of the judgment.

A new judge was assigned to the matter. The second judge denied Mello's request, finding that it was inappropriate to make the request by ex parte application as notice was required unless a waiver of notice was granted. Mello returned to the court on

January 17, 2017, and filed a request for waiver of notice for the motion to enforce the judgment.

The second judge heard the matter on February 1, 2017. The court held that Family Code section 215 applied, notwithstanding the default judgment entered against Moore, and that Moore was entitled to notice of the motion to enforce the judgment. Without notice being provided to Moore, the court held that it was unable to hear the motion. The court further indicated that potential service of notice to Moore at his last known address, the marital residence, would not be sufficient as it was known that he no longer lived there.

On February 8, 2017, Mello filed a request for reconsideration of the denial of the motion to enforce the judgment pursuant to Code of Civil Procedure section 1008. The second judge heard the motion for reconsideration and took the matter under submission. On May 9, 2017, the court issued its order denying the motion for reconsideration. In doing so, the second judge questioned the validity of Mello's notice of the dissolution proceeding by publication as well as the lack of notice of her request to enforce the judgment. As to publication of the summons, the second judge found that "[i]t appears that publication in the Visalia Times-Delta did not provide notice to [Moore]." He also questioned the validity of the default judgment, explaining that "[i]n declining to exercise its discretion [to enforce the judgment], the Court believes that the Default Judgment obtain[ed] by [Mello] on December 15, 2014 exceeded the relief requested in [Mello's] Petition filed on October 4, 2013," on grounds that the petition did not list the marital residence.

DISCUSSION

The second judge provided in his ruling that "[i]n declining to exercise its discretion to appoint an Elisor in this action, the court takes into consideration issues of notice and validity of the Judgment which are present." The second judge did not vacate the judgment, rather, he declined to enforce it. The ultimate question before this court,

then, is whether the second trial judge had the discretion not to enforce the final judgment, valid on its face, entered by the first judge. In reaching that ultimate question, we will consider the grounds upon which the second judge relied in exercising his discretion not to appoint an elisor and implement the judgment.

I. Appealable Order

As a jurisdictional question, we evaluate whether the denial of the motion was an appealable order of the trial court. We find that it is. Code of Civil Procedure section 904.1, subdivision (a), lists the types of orders from which an appeal may be taken. Code of Civil Procedure section 904.1, subdivision (a)(2), states that an order made after final judgment is appealable. Further, California courts have more specifically held that postjudgment orders that relate to enforcement of a judgment are appealable. (*In re Marriage of Adams* (1987) 188 Cal.App.3d 683, 688.) In contrast, an order denying a motion for reconsideration is not separately appealable. "However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (Code Civ. Proc., § 1008, subd. (g).)

II. Standard of Review

Here, Mello moved the court to use its inherent and statutory powers "[t]o compel obedience to its judgments, orders, and process" to effectuate the transfer of title of the marital residence to Mello as her sole and separate property in conformance with the terms of the marital dissolution. (Code Civ. Proc., § 128, subd. (a)(4).) Appellate courts review the exercise of such power for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 209.) "'The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown.'" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) "'The scope of discretion always resides in the particular

law being applied, i.e., in the "legal principles governing the subject of [the] action …." Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion. [Citation.] … [¶] The legal principles that govern the subject of discretionary action vary greatly with context. [Citation.] They are derived from the common law or statutes under which discretion is conferred.' [Citation.] To determine if a court abused its discretion, we must thus consider 'the legal principles and policies that should have guided the court's actions.'" (*Ibid.*)

III. Notice

A. Requirements Under Family Code Section 215, Subdivision (a)

Family Code section 215 requires parties in family law actions to provide notice to the opposing party of orders that materially modify the rights of the parties. Section 215, subdivision (a), states:

> "(a) Except as provided in subdivision (b) or (c), after entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid *unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served*, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient." (Italics added.)

Mello argues that Family Code section 215, subdivision (a), does not apply but, alternatively, if it does, notice is not required in this case. First, Mello argues that section 215 does not apply because the order at issue was not a modification of a judgment or order and, therefore, not an order that is enumerated under the section. Section 215, subdivision (a), describes the types of orders that the opposing party must be notified of in order to be valid. Section 215, subdivision (a), on its face applies postjudgment to all "subsequent order[s] in the proceedings." We find that the order to

enforce the judgment here is governed by Family Code section 215, subdivision (a). Mello had the burden to demonstrate why section 215, subdivision (a), would not apply to the order but failed to present any authority in support of her argument. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.)

Family Code section 215, subdivision (a), by its terms, requires notice "to be given to a party to the proceeding [to be] served, *in the same manner as the notice is otherwise permitted by law to be served*, upon the party." (Italics added.) Section 215, subdivision (a), does not prescribe how service should be effectuated. Rather, it requires notice "in the same manner … otherwise permitted by law to be served." (*Ibid.*) The trial court held that section 215, subdivision (a), required that Moore be served with notice of the motion to enforce the judgment, without addressing the manner notice is "otherwise permitted by law to be served." (*Ibid.*)

B. Requirements Under Code of Civil Procedure and Effects of Publication and Default Judgment

The Family Code specifies that in dissolution proceedings, "[a] copy of the petition, together with a copy of a summons, in form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally." (Fam. Code, § 2331.) We will turn to the requirements for service and notice under the Code of Civil Procedure to determine what notice was required.

That a party "'cannot, despite reasonable diligence, be served by one of the preferable methods, i.e., in person, by mail, or by substituted service ([Code Civ. Proc.,] §§ 415.10–415.30), is not tantamount to a finding that a defendant is outside the jurisdiction of the court. Service by publication presupposes the defendants are subject to the court's jurisdiction and is employed only after the plaintiff has exhausted all other avenues to discover their whereabouts. However, so long as [the] defendants remain within the jurisdiction of the court they are amenable to service of process by any means,

including the method of last resort—publication.'" (*Watts v. Crawford* (1995) 10 Cal.4th 743, 750 (*Watts*).)

Service by publication is governed by Code of Civil Procedure section 415.50. Upon a showing that a "party to be served cannot with reasonable diligence be served in another manner specified in this article" (*id.*, subd. (a)), then the court may order publication in the following manner:

> "The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party…." (Code Civ. Proc., § 415.50, subd. (b).)

By the terms of the statute, service by publication requires service only of the summons.[2] After the expiration of the time for answering, and upon offering proof that no answer was filed or appearance made by the party to be served, "the clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief …." (Code Civ. Proc., § 585, subd. (b); see *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 756–757.)

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2 In family law proceedings, the summons provides the following notice:

"You have **30 calendar days** after this *Summons* and *Petition* are served on you to file a Response … at the court and have a copy served on the petitioner. A letter, phone call, or court appearance will not protect you.

"*If you do not file your Response on time, the court may make orders affecting your marriage or domestic partnership, your property, and custody of your children.* You may be ordered to pay support and attorney fees and costs.

"For legal advice, contact a lawyer immediately. Get help finding a lawyer at the California Courts Online Self-Help Center …, at the California Legal Services website …, or by contacting your local county bar association." (Judicial Council Forms, form FL-110, italics added.)

Once a default has been entered, further notice to the defaulted party is not required but for amendments to the pleadings. (Code Civ. Proc., § 1010 ["No bill of exceptions, notice of appeal, or other notice or paper, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding."].)

The Family Code has provided additional guidance with regard to what is required to be served on a defaulting party. Ordinarily, "[i]n order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party" a preliminary and later a final declaration of disclosure of assets. (Fam. Code, § 2103.) However, in the case of default judgment, the petitioner in a dissolution action "shall not be required to serve a final declaration of disclosure on the respondent …." (Fam. Code, § 2110.) In addition, in the case of default based on service by publication, the requirement to provide the preliminary declaration to the respondent is also waived. (*Ibid.*)[3]

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[3] Family Code section 2110 states that "a preliminary declaration of disclosure by the petitioner is required unless the petitioner served the summons and petition by publication or posting pursuant to court order and the respondent has defaulted." While the Code of Civil Procedure sections addressing service by publication state that only the summons need be published, the language of Family Code section 2110 creates potential uncertainty if both the summons and petition must be published. As mentioned, the Family Code looks to the service requirements as set forth in the rules of the Code of Civil Procedure. (Fam. Code, § 2331.) Also, a review of the legislative analysis for the enactment of Family Code section 2110 indicates that the Legislature was aware that service by publication only required publication of the summons. (Assem. Com. on Judiciary, analysis of Sen. Bill No. 340 (2015-2016 Reg. Sess.) June 16, 2015, p. 3.) The legislative analysis noted that service by posting could require the posting of additional documents, depending on the discretion of the court. (*Id.*, pp. 3–4.) For example, posting of the summons on a premises is permitted in unlawful detainer actions. (*Board of Trustees of Leland Stanford Junior Univsity v. Ham* (2013) 216 Cal.App.4th 330, 333.)

The Legislature noted that the purpose of the bill was to create a limited exception to providing disclosure documents when a missing spouse cannot be located and fails to participate in the proceeding to protect against the possibility that sensitive financial information contained in the preliminary disclosures would not fall into the hands of third parties. (Assem. Com. on Judiciary, analysis of Sen. Bill No. 340, *supra*, at p. 4.) "[T]he only difference between the

Family Code section 215, subdivision (a), mandates the notice "required to be given to a party to the proceeding [to be] served, *in the same manner as the notice is otherwise permitted by law to be served*, upon the party." (Italics added.) As described above, in the case of service by publication in a marital dissolution proceeding, once the family law summons is published, the respondent does not answer or appear and default is entered, then no further notice is required.

After substantial effort, Mello could not locate Moore, who was no longer residing in the United States. He had moved to Angola, a country that is not a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638) (the Convention). (See *Inversiones Papaluchi S.A.S. v. Superior Court* (2018) 20 Cal.App.5th 1055, 1064; Code Civ. Proc., § 413.10, subd. (c).) The Convention "was intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 698; see *Cane Creek Cycling Components, Inc. v. Tien Hsin Indus. Co.* (W.D.N.C., Oct. 15, 2007, No. 1:07cv133) 2007 U.S. Dist. Lexis 79957, 22 [finding it to be an "enormous burden" on a plaintiff to serve a defendant domiciled in a nonsignatory country].)

Despite contacting Moore's family, friends and a law firm in Angola, and searching phone directories and the internet, Mello was unable to serve Moore. She duly requested and received authorization from the court to serve notice by publication after she had reasonably exhausted all other avenues. (See *Watts*, *supra*, 10 Cal.4th at p. 750.)

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requirements under existing law and those set forth under this bill are that a petitioner would not be required, in the rare situation that he or she gave notice by publication or posting, to send financial information to an address where the respondent no longer lives." (*Ibid.*) Based on the statements in the legislative history, it appears that the statute was not intended to add additional requirements, such as require the petition be served by publication.

The result that Moore could not be found or did not respond to the filing of the dissolution action is not surprising. From the documents provided by Mello, it appears that she and Moore had discussed the event of divorce prior to him leaving for Angola. Mello and Moore had entered into a written agreement regarding the division of their marital assets and liabilities. The e-mail exchange from December 26, 2013, concluded with Moore stating that he never wanted to see Mello again. Moore left with the intent not to continue the marriage and agreed to give the major assets of the marriage, including the marital residence and the car, to Mello. Over two years passed since the judgment of dissolution was granted before Mello filed the motion to enforce the judgment. There was no evidence that, at any time during that period, Moore took any action with respect to his marriage, community property, the default or that he attempted to move to set aside the default judgment. Since over two years passed since default judgment was entered, Moore is barred from moving to set it aside. (See Code Civ. Proc., § 473.5; *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180; *Blueberry Properties, LLC v. Chow* (2014) 230 Cal.App.4th 1017, 1020 ["At this point, any appeal as to that judgment would be untimely. We therefore review only the postjudgment order …."] (*Blueberry*).)

We find no error by the first judge in granting Mello permission to serve summons on Moore by publication in the Visalia Times-Delta. "'Before allowing a plaintiff to resort to service by publication, the courts necessarily require him to show exhaustive attempts to locate the defendant, for it is generally recognized that service by publication rarely results in actual notice. [Citations.]'"[4] (*Watts*, *supra*, 10 Cal.4th at p. 749, fn. 5,

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4 The second judge here found that publication of the summons in the Visalia Times-Delta, a newspaper in Tulare County, did not provide notice to Moore, relying on *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 42 (*Olvera*) for the proposition that the newspaper was not the paper most likely to give *actual* notice to Moore. In *Olvera*, the court vacated the order for publication, finding that the petitioner failed to make a sufficient showing of diligence in attempting to serve the respondent, and that publishing in a newspaper in Riverside, California was not most likely to provide notice when it was known that the respondent resided in Pismo

quoting *Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1392–1393.) Neither do we find error in the entry of a default judgment against Moore in accordance with Code of Civil Procedure section 585, subdivision (b). Moore's default was properly taken after he did not answer or appear within the prescribed time. Mello "thereafter may apply to the court for the relief demanded in the complaint[,] [t]he court shall hear the evidence offered by [Mello], and shall render judgment in [Mello's] favor for that relief …." (Code Civ. Proc., § 585, subd. (b).) And, as to Mello's motion to effectuate a transfer of title of the marital residence, section 1010 of the Code of Civil Procedure provides that "[n]o bill of exceptions, notice of appeal, *or other notice or paper*, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding." (Italics added.) Here, there was no request for any amendment to the dissolution pleadings or, for that matter, any amendment or modification to the judgment. On the contrary, Mello's request was for a clerical act to implement and enforce a final judgment. Consequently, neither Family Code section 215 nor the rules of the Code of Civil Procedure required Mello to serve Moore with her motion.

IV. Scope of Relief Awarded Relative to Request for Relief in Pleadings

The second judge explained in his ruling that, in declining to exercise his discretion to appoint an elisor, he believed that the judgment exceeded the relief requested in the petition with regard to the marital residence and, therefore, should not be

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Beach, California. (*Id.* at pp. 42–43.) Under the publication statute, the court has discretion to order publication in any newspaper in or out of the State of California that "is most likely to give actual notice to the party to be served." (Code Civ. Proc., § 415.50, subd. (b).) Whereas in *Olvera* the court found that the petitioner failed to provide evidence that publication in Riverside was most likely to give actual notice to the respondent, here Mello set forth in her declaration that publication in Tulare County would most likely provide notice because Moore's whereabouts were unknown, he did not have a fixed address and Tulare County was the location of the marital property, where Mello was seeking the divorce and where Moore last resided. The trial court did not abuse its discretion in choosing that location for service by publication.

enforced. The court was concerned that the petition for dissolution did not list the marital residence and there was no evidence that Moore was served with an amended petition or a property declaration placing him on notice that the determination of the division of the marital residence was at issue in the dissolution proceeding.[5]

The trial court correctly noted that there is a body of cases which stand for the proposition that the relief sought by a party cannot exceed that which the defending party has been provided notice. "It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. [Citations.] California satisfies these due process requirements in default cases through [Code of Civil Procedure] section 580." (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166 (*Lippel*).) Code of Civil Procedure section 580, subdivision (a), provides in part: "The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint …." ""[T]he primary purpose of the section is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them."" (*In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1302 (*Eustice*).)

"A defendant has the right to elect not to answer the complaint. [Citation.] Although this may have been a tactical move by [the] defendant, it is a permissible tactic. [The] [d]efendant, relying on the absence of a statement of damages in the complaint,

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5 The second judge suggests in his ruling that he may have been time-barred from voiding the judgment because the statutory period for challenging the validity of the default judgment had passed (see *Thompson v. Cook* (1942) 20 Cal.2d 564, 569), although he also refers to an exception to that rule, making his position unclear. However, whether the trial court was so constrained is not material to the disposition of this appeal. We determine in this appeal that the substantive grounds upon which the court questioned the validity of the judgment are insufficient to justify his exercise of discretion not to appoint an elisor and effectuate the judgment. We, therefore, do not reach the issue of whether the second judge was time-barred from asserting any of those grounds. In any event, the salient point on appeal is that, for his own reasons, the second judge did not deem the judgment void or set it aside but, rather, declined to enforce the final judgment.

was entitled to have default entered against him. [Code of Civil Procedure] [s]ection 580 'ensure[s] that a defendant who declines to contest an action … [is] not … subject[ed] … to open-ended liability' and operates as a limitation on the court's jurisdiction." (*Stein v. York* (2010) 181 Cal.App.4th 320, 325.) The limitation on default judgments under Code of Civil Procedure section 580 applies to marital dissolution proceedings. That section "requires that a default judgment in a dissolution action which is greater than the amount specifically demanded in the petition be considered void as beyond the court's jurisdiction …." (*In re Marriage of Wells* (1988) 206 Cal.App.3d 1434, 1438 (*Wells*).)

In *Lippel*, the California Supreme Court found a default judgment ordering the husband to pay child support was void where the petition for dissolution did not show a request for child support and there was no separate request for child support served on the husband. (*Lippel, supra,* 51 Cal.3d at p. 1163.) Using the form petition, the wife checked the box that she was requesting child custody, but did not check the box requesting the payment of child support. (*Ibid.*) The husband was served with a summons and a copy of the petition but did not respond. (*Ibid.*) The court granted default judgment, and awarded the wife $100 a month in child support even though there was no request for support in the petition. (*Id.* at p. 1164.) The husband was served with a copy of the entry of judgment, but not the judgment itself. The husband challenged the judgment 16 years later, when he was made aware of the child support order. (*Ibid.*) The court held that the husband's right to notice embodied in Code of Civil Procedure section 580 was violated and vacated the order of child support. (*Lippel, supra*, at pp. 1167, 1173.)

The Supreme Court described in significant detail how, in 1970, the Judicial Council established the use of a standard form petition in marital dissolution actions. (*Lippel, supra*, 51 Cal.3d at p. 1169.) It held that notice was based on whether the wife checked the appropriate box requesting the type of relief in question. And that by serving the husband with a petition without the box checked for child support, he was "therefore, never put on notice that child support would be placed in issue in the dissolution

proceeding, since a copy of the petition served on him did not raise child support as an issue." (*Id.* at p. 1170.) "[T]he manner in which these boxes are checked, or not checked, informs and puts the respondent on notice of what specific relief the petitioner is, or is not, seeking." (*Id.* at pp. 1169–1170.)

Other courts have held, based on *Lippel*, that "due process is satisfied and sufficient notice is given for [Code of Civil Procedure] section 580 purposes in marital dissolution actions by the petitioner's act of checking the boxes and inserting the information called for on the standard form dissolution petition which correspond or relate to the allegations made and the relief sought by the petitioner. The opinion does not suggest that any greater specificity is required." (*In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 879.) "[N]othing in the language of *Lippel* … compels a conclusion that the amount of the relief requested, as contrasted with the type of the relief requested, must be inserted in the relevant form if the form does not itself expressly demand such data." (*Ibid*., fn. omitted)[6]

In *Eustice*, the Court of Appeal raised the issue present in Mello's appeal. The *Eustice* court explained "This appeal raises an issue of first impression as to whether a default judgment is void for lack of notice where the marital dissolution petition requests the court to determine the property rights of the parties but does not list any property." (*Eustice*, *supra*, 242 Cal.App.4th at p. 1295.) There, the husband contended that the

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6 In certain instances not applicable here, checking the appropriate box may not be sufficient. (*In re Marriage of Kahn* (2013) 215 Cal.App.4th 1113, 1116 (*Kahn*).) In *Kahn*, the wife, in her dissolution petition, checked the box for "[o]ther" relief, without specifying the nature or amount of the relief sought and the court awarded her $275,000 for breach of fiduciary duty against the husband. (*Ibid.*) On appeal, the court held that the wife did not provide sufficient notice under Code of Civil Procedure section 580 of the relief awarded in the default judgment, because she did not specify the nature and amount of damages requested. (*Kahn*, *supra*, at p. 1116.) The court in *Kahn* explained that "the checkbox for 'other' relief is distinguishable from the checkboxes for a division of community property. It is a catchall category; it could encompass practically any kind of relief, including relief that is not statutorily required in a marital dissolution action. The respondent is therefore entitled to notice of the specific nature and amount of any 'other' relief sought before defaulting." (*Id.* at p. 1119.)

wife's petition for dissolution did not identify specific marital assets and debts subject to division; therefore, the default judgment was void under Code of Civil Procedure section 580. (*Eustice*, *supra*, at p. 1302.) The court found "[The wife] checked the boxes for division of community property and determination of property rights. By checking those boxes, it was clear [the wife] was seeking disposition of all of the parties' assets and debts." (*Id.* at p. 1307.) In *Eustice*, the husband filed a response to the petition and participated in the dissolution proceeding, including in the exchange of preliminary declarations of disclosure. (*Ibid.*) However, later in the proceeding, the court sanctioned the husband for serious discovery abuses and issued sanctions in the form of striking the husband's answer and entering his default. (*Id.* at p. 1299.) Because of the husband's participation in the proceedings and exchange of information about marital assets and debts, the wife's failure to identify specific assets in the petition did not raise notice concerns under Code of Civil Procedure section 580 and the *Eustice* court, therefore, did not void the judgment. (*Eustice*, *supra*, at pp. 1308, 1311.)

Here, as in *Eustice*, Mello checked the appropriate boxes on the petition for dissolution, requesting that the court determine the property rights of the parties. Further, the relief awarded in the judgment here, to divide the couple's community assets and debts, was precisely what was requested in the petition for dissolution. Accordingly, the nature and type of relief requested is clear from the pleading. In addition, the award of the marital residence to Mello implemented the couple's written agreement as to the residence. Mello included the marital settlement agreement with her declaration in support of her request to have the default judgment entered. The agreement identifies the marital residence, one vehicle and two debts and sets forth the couple's agreement as to their disposition. The agreement includes the statement "[t]his is my legal document for the court." Nothing in the record suggests that there are any other community assets or debts of significance.

Although the marital residence was not listed in the petition or on an attachment thereto, we find that any notice concerns under Code of Civil Procedure section 580 are alleviated by the circumstances present in this case. "'"[T]he primary purpose of [section 580] is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them."'" (*Eustice, supra*, 242 Cal.App.4th at p. 1302.) Here, Moore entered into a marital settlement agreement that Mello included with the declaration in support of her request for entry of a default judgment, testifying under oath that it is a true and correct copy of the couple's agreement and signatures. The agreement identifies the marital residence, one vehicle and two debts and sets forth the couple's agreement as to their disposition. The agreement includes the statement "This is my legal document for the court." The agreement is signed by both Moore and Mello. Based on the agreement he entered into, Moore knew that the marital assets and debts would be disposed of in a dissolution proceeding and that the marital residence and vehicle would be confirmed to Mello. Moore, therefore, had "'"adequate notice of the maximum judgment that may be assessed against [him]."'" (*Eustice*, *supra*, at p. 1302.)

The record also shows that Moore had no interest in participating in a dissolution proceeding or even cooperating with Mello to finalize their divorce and agreed upon property division. Moore made it clear that he did not wish ever to see Mello again and ceased contact with her after their last e-mail exchange in December 2013. Moore has made no contact with Mello or the court since his departure to inquire about the marital property or the status of his marriage to Mello.

It is reasonable to infer from these circumstances that Moore was content Mello would proceed to dissolve their marriage and dispose of their limited community assets based on their written agreement. The judgment that was entered in this case did no more than that. No material relief was awarded to Mello that the couple did not expressly set forth in the agreement. We therefore conclude that Moore had notice that Mello would be awarded the marital residence based upon his express consent.

In reaching this conclusion, we do not hold that a marital settlement agreement generally is a substitute for listing marital property in the petition for dissolution or that a marital settlement agreement will cure Code of Civil Procedure section 580 notice concerns in all circumstances. Here, it would have been preferable for Mello to have included the marital settlement agreement and a list of the marital property with the petition for dissolution. We find only that the agreement and attendant circumstances in this case are not a sufficient basis for the trial court to exercise its discretion not to enforce the final judgment duly entered by the same court.

V. Discretion Not to Enforce a Final Judgment

We have determined that the second judge's concerns about notice and the scope of relief awarded in the judgment do not amount to grounds to discretionarily deny a request to enforce it. Of course, the second judge did not vacate or set aside the judgment. Rather, he exercised his discretion to deny Mello's request for the court's assistance in executing documents to effectuate the transfer of title of the marital residence to her, effectively depriving her of the benefits of the judgment, citing *Blueberry*, *supra*, 230 Cal.App.4th at page 1021. The court in *Blueberry* affirmed the trial court's decision to appoint an elisor under Code of Civil Procedure section 128, subdivision (a)(4), to transfer property to effectuate the terms of a stipulated settlement under Code of Civil Procedure section 664.6. (*Blueberry*, *supra*, at pp. 1021–1022.) The court found that the appellant did not present any valid basis for denying the relief requested so it was no abuse of discretion to grant the relief. (*Id.* at p. 1021.) But *Blueberry* does not stand for the proposition that a court has unfettered discretion not to appoint an elisor where there is no legal basis not to do so.

Generally, it is axiomatic that parties to a final judgment are entitled to its enforcement. Otherwise, the judicial system's necessary reliance on the finality of judgments would be at risk. Here, although the second judge raised concerns about, and was critical of, the judgment and the procedure by which it was entered, he did not

declare it void, nor did he modify or set it aside. As a result, the judgment remains valid and enforceable as entered. It is not reasonable to base a refusal to enforce a final judgment on disagreements with its entry when there is no legal basis for denying the relief requested. As this court observed in a different context, "[w]e appreciate that Judge Corona and Judge Simpson may disagree with Judge Smith that the prior 2006 Henderson petition complied with [California's Structured Settlement Transfer Act] and all applicable laws. However, that disagreement over prior judicial findings does not provide sufficient grounds for a superior court judge to void the final order of another superior court judge." (*321 Henderson Receivables Origination LLC v. Ramos* (2009) 172 Cal.App.4th 305, 318.)

DISPOSITION

The judgment is reversed. The trial court is directed on remand to appoint an elisor to execute the documents necessary to effectuate transfer of title of the marital residence into Mello's name. Mello is entitled to her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

_____
MEEHAN, J.

WE CONCUR:

_____
HILL, P.J.

_____
POOCHIGIAN, J.